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Allen, 151 Mass. 79; *Baltimore* v. *Frick,* 82 Md. 77, and in the dissenting opinion of DOUGLAS, J., in *Collins* v. *Land Co.,* 128 N. Car. 563. In view of the facts, it would seem that more substantial justice could have been obtained by giving force and effect to the second plat, and compensating the plaintiff for any resulting damage.

PLATS—VACATION—DEDICATION TO PUBLIC.—One Bell platted an addition to the city of Chicago, in which he sold two lots. A statute permitted the owner, before selling any lots thereon, to vacate any plat or part of a plat. After selling lots it could be done with consent of the purchasers, in which case all rights of the city would be divested. In attempted compliance with this statute Bell recorded an instrument vacating a part of the plat on which no lots had been sold. The portion thus vacated became, by mesne conveyance, the property of appellant. After 33 years from the purported vacation the city brings proceedings to levy a special assessment on appellant's property to improve a street designated in that portion of the plat which was thus vacated. *Held,* the attempted vacation was ineffective, and the special assessment could be levied. *Saunders* v. *City of Chicago* (1904), — Ill. —, 72 N. E. Rep. 13.

Three judges dissented on the ground that under the statute the consent of lot owners in one part of a plat was not needed to vacate another and different portion, where no lots had been sold. That at all events none but lot owners could object, that none had objected, that their right to object was now lost, and therefore that the vacation was effective. The majority based their construction of the statute and the equities of the case upon the common law doctrine that if lots are sold with reference to a recorded plat, that plat is to be regarded as a unity, and the owner of lots in any portion of the plat can prevent a vacation of any other portion, all of the streets being deemed irrevocably dedicated to the public. See preceding note.

RAILROADS—CONSOLIDATION—CONDEMNING DISSENTING STOCK.—A North Carolina statute (1901) confers authority on any railroad or transportation company, now or hereafter incorporated by the state of North Carolina, with the approval of a majority of its stockholders, to consolidate with the Seaboard Air Line Company, and provides for assessing and paying the value of dissenting stock. Plaintiff, a dissenting stockholder, was the owner of seven shares of stock in one of the defendant consolidating companies, the Raleigh & Gaston R. Co., which shares were issued prior to the Constitution of 1868, which first reserved to the state the right to amend charters granted by it. The plaintiff refused to sell his stock, and brought an action demanding judgment that the consolidation be declared ultra vires and void as to him, that an accounting be rendered and a receiver appointed. *Held,* that the statute authorized an exercise of the power of eminent domain, but did not impair the obligation of a contract. *Spencer et al.* v. *Seaboard Air Line Ry. Co. et al.* (1904), — N. C. —, 49 S. E. Rep. 96.

For comment see NOTE AND COMMENT, ante p. 309.

SALES—LIABILITY OF SELLER ON A COLLATERAL WARRANTY.—Defendant sold to plaintiff a car load of scrap iron. The sale, which was made orally, was

later confirmed by letter. Defendant guaranteed the goods to be "good, clean, busheling scrap," which phrase plaintiff claimed as constituting a warranty of quality collateral to the main agreement. Plaintiff had opportunity to examine the goods but failed to do so. The scrap iron was found, after delivery, to contain dirt, tin, cast iron and other substances which impaired its value and thereby caused loss to plaintiff. *Held,* that the expression "good, clean, busheling scrap" was a collateral warranty of quality, and that plaintiff could recover even though he did not examine the goods when an opportunity to do so was afforded him. *Lichtenstein* v. *Rabolinsky* (1904), 90 N. Y. Supp. 247.

In executory contracts of sale where it is alleged that a warranty of quality has been made, it is sometimes difficult to decide whether the words which constitute the alleged warranty are words of description or of warranty. Where the words are descriptive of the goods, even though indicating quality, they do not make up a warranty of quality of such a nature that the buyer can recover for a breach thereof if he has had an opportunity to inspect the goods and has afterwards converted them to his own use, provided an examination would have disclosed the existing defect. *Neff v. McNeeley et al.,* — Neb. —, 96 N. W. 150; *Maxwell* v. *Lee et al.,* 34 Minn. 511, 27 N. W. 196; *McClure* v. *Jefferson et al.,* 85 Wis. 208, 54 N. W. 777; *Reed* v. *Randall,* 29 N. Y. 358, 86 Am. Dec. 305. When goods are sold by description, although there is no warranty of fitness for a particular purpose, there is an implied warranty that the goods shall be of the kind described. *Gregg* v. *Page Belting Co.,* 69 N. H. 247, 46 Atl. 26; *Jarechi Mfg. Co.* v. *Kerr,* 165 Pa. St. 529, 30 Atl. 1019, 44 Am. St. R. 674; *Diebold Safe & Lock Co.* v. *Huston & Breeding,* 55 Kan. 104, 39 Pac. 1035, 28 L. R. A. 53; *Peoria Grape Sugar Co.* v. *Turney,* 175 Ill. 631, 51 N. E. 587; *Kleeb* v. *Bard,* 7 Wash. 41, 34 Pac. 138; *Wisconsin Red Pressed Brick Co.* v. *Hood,* 67 Minn. 329, 69 N. W. 1091. But where, in an executory contract for the sale of personal property, the seller warrants the quality of the goods and the vendee after receiving them, discovers that there has been a breach of the warranty, the vendee is not required to return the goods, but may retain them and recover upon the warranty. *First Nat. Bank of Kansas City* v. *Grindstaff et al.,* 45 Ind. 158; *Day et al.* v. *Pool et al.,* 52 N. Y. 416, 11 Am. Rep. 719; *Zabriskie* v. *The Central Vermont R. R. Co.,* 131 N. Y. 72; *Underwood* v. *Wolf,* 131 Ill. 425, 19 Am. St. R. 40; *Halley* v. *Folsom,* 1 N. Dak. 325.

VENDOR AND PURCHASER—POSSESSION AS NOTICE.—Defendant was a joint owner of a tract of land with another who subsequently died intestate. Defendant was one of the latter's legal heirs, and entered into a written unrecorded contract with the other heirs through their agent, whereby they sold to him their shares in the estate. Defendant was in possession. Plaintiff without notice of this contract purchased the interest of the heirs and obtained deeds of title. He brings suit to compel a partition of the property. *Held,* he was entitled to a decree. *Martin* v. *Thomas* (1904), — W. Va. —, 49 S. E. Rep. 118.

In a recent case, *Collum* v. *Sanger Bros.* (1904), — Tex. —, 82 S. W. Rep. 459, involving the same principles the court reached a different conclusion. For a discussion of the principles involved see 3 MICH. LAW REV. 246.